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10/602,406	06/23/2003	James A. Kovach	16-343	1673
7590	08/12/2004		EXAMINER	
WATTS, HOFFMANN, FISHER & HEINKE CO., L.P.A. 1100 Superior Ave., Ste. 1750 Cleveland, OH 44114			MULLER, BRYAN R	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 08/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/602,406

Applicant(s)

KOVACH, JAMES A.

Examiner

Bryan R Muller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/23/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

The specification of the application is objected to because the number 86 that is shown in Fig. 2 and 6 is not discussed in the spec. Correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The scope of the claim is unclear. It is not clear whether the method of use claim requires all of the specifics of the wrench structure set forth in the claim or not. Examiner suggests the addition of an initial step of ,“providing an drain wrench having...”, where structures set forth in paragraphs i-vi are listed within this process step. For the purpose of this office action, claim 18 has been interpreted by the examiner as if it contains the step of providing the wrench having the structure set forth in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

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(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7, 9 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Machovsky ('317).

Referring to claim 1, Machovsky discloses in figure 2 a wrench body (30) having a longitudinal axis (26), a first end portion (32) extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud, and a second end portion (44) extending from said wrench body in a direction opposite from said first end portion, said second end portion defining a polygonal recess (46) configured to accept a standard socket drive.

Referring to claim 7, although Machovsky does not specifically disclose the ability of his invention to engage a toilet seat nut, the invention is inherently capable of engaging a toilet seat nut. Figures 9A and 9B show an internally flanged faucet nut (col. 2, lines 59-60) capable of being engaged by Machovsky's invention that is very similar in size and shape to a toilet seat nut.

Referring to claim 9, Machovsky discloses in figures 2, 4, 5, 6 and 7 spaced projections (66 and 68) that define first and second generally orthogonal channels that accept a cross-shaped portion (fig. 10, 94) of said drain spud (fig. 10, 92).

Referring to claim 17, Machovsky discloses in his spec. the method of removing a drain spud, comprising: inserting a socket drive into a first end portion of a drain wrench (col. 2, lines 38-41), engaging a drain spud with a

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second end portion extending in a direction opposite from said first end portion (col. 5, lines 27-30), and rotating said socket drive to remove said drain spud (col. 5, lines 26-28).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick (754) in view of Machovsky (317). The Battrick reference discloses in figures 1A and 1B, a drain spud wrench (10) having a wrench body with a longitudinal axis wherein the first end portion (26) of the wrench is configured to engage a drain spud having a first size and the second end portion (50) is configured to engage a drain spud having a second size. The Battrick reference, however, does not disclose the use of a polygonal recess on one end configured

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to accept a standard socket drive. The Machovsky reference discloses a multi-purpose plumbing tool capable of engaging a drain spud consisting of a wrench body with a longitudinal axis wherein the first end portion of the wrench is configured to engage a drain spud and the second end portion defines a polygonal recess configured to accept a standard socket drive with the purpose of introducing a socket wrench to rotate the tool and in turn, rotate the drain spud that is engaged by the opposite end of the tool. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supply one end of the Battrick tool with a polygonal recess configured to accept a standard socket drive as taught by Machovsky to provide the option of driving the tool with a socket driver in a case where the removable handle could not fit or is undesirable.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick (754) and Machovsky (317) as applied to claim 1 above, and further in view of Duke (315). Battrick and Machovsky are described supra. However, Battrick and Machovsky do not teach to supply both ends with such a polygonal recess configured to accept a standard socket drive. Duke discloses a two sided tub strainer wrench with a multi-positionable handle capable of driving either side of the wrench. The wrench of Duke is supplied with a non-circular recess in both ends that is similar to the polygonal recess configured to accept a standard socket drive disclosed by Machovsky. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supply the both ends of the wrench disclosed by Battrick with the polygonal recess of

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Machovsky as taught by Duke to allow for either end of the tool to be driven at different times with a socket driver or by the removable handle, make the tool more versatile and easily used.

Claims 4, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machovsky (317) in view of Bollinger(717). As discussed above Machovsky discloses a wrench body having a longitudinal axis, a first end portion extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud comprising spaced projections that define first and second transverse channels that accept a cross-shaped portion of said drain spud, and a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion defining a polygonal recess configured to accept a standard socket drive. However, Machovsky does not disclose a second polygonal recess that is axially aligned with the first recess and axially spaced from the first recess, or the addition of a socket driver and socket drive extension that is removably connected to the socket driver to create a drain spud wrench assembly. Bollinger discloses a multi-sized tool adapter (40) that acts as an extension and has two polygonal recess' (22 and 24) wherein the second polygonal recess is axially aligned with the first recess and axially spaced from the first recess that would allow different sized tools and ratchets to be used with the same adapter (col. 1, lines 7-8). Bollinger also discloses that the dual cavity application may be applied to different types of rotational tools (col. 4, lines 48-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to supply the rotational plumbing tool of Machovsky with a second axially aligned polygonal recess in view of Bollinger which would make the tool capable of receiving different sized sockets (as stated in claim 4 and 14) and as a result, a more universal tool that could be used with multiple standard socket drives and eliminating the need for a specialized tool to drive the spud wrench. It also would have been obvious to apply the teachings of Bollinger to Machovsky's tool by including a socket driver and socket drive extension to create the drain spud wrench assemblies of claim 11 and 15. With the inclusion of the socket driver and socket drive extension provided, it would have been obvious to link the extension into any of the polygonal recess' (as stated in claim 14) in order to drive the tool. The advantage of using a socket drive extension with a socket driver is that the combination would allow for the spud wrench to be used for deep sockets in hard to reach areas and allow the tool to be driven in areas where the removable handle may not be an option due to space constraints.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machovsky as applied to claim 1 above, and further in view of the applicant admitted prior art. As discussed above, Machovsky discloses a wrench body having a longitudinal axis, a first end portion extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud and a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion defining a polygonal recess configured to accept a standard socket drive. Machovsky

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however does not disclose that the socket recess should be a particular size, such as  $\frac{1}{2}$ " in claim 5 or  $\frac{3}{8}$ " in claim 6, but only states that the tool should receive a conventional socket drive. The applicant discloses in the specification on page 4, lines 22-24 that  $\frac{3}{8}$ " and  $\frac{1}{2}$ " are *standard* socket drive sizes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the socket recess of the Machovsky tool to accept  $\frac{1}{2}$ ",  $\frac{3}{8}$ " or any other "standard" size in view of applicants admitted prior art so that most people using this tool would be able use a standard tool to drive the wrench that they may already possess or would easily be able to find.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Machovsky and Bollinger as applied to claim 4 above, and further in view of the applicant admitted prior art found on page 4, lines 22-24 of the application specification. As discussed above, Machovsky and Bollinger disclose a wrench body having a longitudinal axis, a first end portion extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud and a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion defining a polygonal recess configured to accept a standard socket drive and a second polygonal recess that is axially aligned with the first recess and axially spaced from the first recess. Machovsky however does not disclose that the socket recess should be a particular size, such as  $\frac{3}{8}$ " in claim 8, but only states that the tool should receive a conventional socket drive. Bollinger also does not set limitation to the size of the recess but does state that the first recess shall be

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larger than the second recess. The applicant discloses in the spec that the recess may accept a 3/8" or 1/2" *standard* socket drive. In the statement in the applicant's specification, the term "standard" is synonymous with the term "conventional" used by Machovsky. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the first recess of the tool of Machovsky and Bollinger to be 1/2" and the inner recess 3/8", making the inner recess both smaller than the outer recess and a "standard" size in view of the applicants admitted prior art to allow for either of two common sized socket drives that may already be possessed by the person attempting to use the tool to drive the spud wrench making the tool more convenient.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battick in view of Machovsky and Bollinger. As described *supra*, Battick discloses a two sided spud wrench but does not disclose the addition of a polygonal recess capable of accepting a socket drive, a socket driver or a socket drive extension. Machovsky's tool, also a spud wrench discussed above, does provide a polygonal recess capable of accepting a socket drive and Bollinger tool, as discussed, acts as a socket extension and provides a socket wrench as a driver. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a polygonal recess capable of accepting a socket drive to one end of Battick's tool in view of Machovsky and to use a socket driver and socket extension in view of Bollinger with Machovsky's tool. The addition of recess would allow for the tool to be engaged by a socket driver which, when used with an extension would allow for

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the spud wrench to be used on deep sockets in hard to reach areas and allow the tool to be driven in areas where the removable handle may not be an option due to space constraints.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battric and Machovsky as applied to claims 1 and 2 above, and further in view of Bollinger and Duke. Battric and Machovsky, as discussed above, disclose a two sided spud wrench where both sides are configured to engage different sized spud drains and the first side is provided with a polygonal recess capable of accepting a socket drive. Battric and Machovsky, however, do not disclose a second polygonal recess that is axially aligned with the first recess and axially spaced from the first recess or the addition of a third and fourth polygonal recess that are axially aligned and spaced with each other, to the second side of the tool. As discussed above, Bollinger discloses a socket extension tool that has two polygonal recesses of different sizes that are axially aligned. Also, as discussed above, Duke discloses a two-sided tub strainer with non-circular recess' in both ends capable of receiving a driving tool. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second polygonal recess to the first side of the Battrick and Machovsky tool in view of Bollinger to allow for different sized socket drives to engage the tool making it a universal tool that could be used with multiple standard socket drives that most people may already have or can easily find and by eliminating the need for a specialized tool to drive the spud wrench. It also would have been obvious to provide the second side of the tool with a similar drive recess capable

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of receiving two different sized socket drives which would allow either side of the tool to be driven by the same standard socket drives that most people may already have or can easily find, making the tool more useful.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick, Machovsky and Bollinger as applied to claims 11 and 12 above, and further in view of Duke. Battrick, Machovsky and Bollinger provide a two sided drain spud wrench where both sides are capable of engaging different sized spud drains and the second side has a recess capable of accepting a socket drive and the combination of this wrench with a socket driver and socket driver extension to make a drain spud wrench assembly. Battrick, Machovsky and Bollinger, however do not disclose the addition of a second polygonal recess to the first side of the wrench. As discussed supra, Duke discloses a two-sided tub strainer with non-circular recess' in both ends capable of receiving a driving tool.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the second side of the tool with a similar polygonal recess capable of receiving a socket driver which would allow either side of the tool to be driven by a standard socket drives that most people may already have or can easily find, making the tool easily and universally useable.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick, Machovsky, Bollinger and Duke as applied to claim 10 above, and further in view of Bollinger. Battrick, Machovsky, Bollinger and Duke, as applied to claim 10, disclose a two-sided spud wrench where both sides are capable of engaging a spud drain and both sides have two different sized, axially aligned

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polygonal recess capable of receiving standard socket drives. However, Battrick, Machovsky, Bollinger and Duke do not disclose the use of a socket driver and a socket drive extension to create the complete drain spud wrench assembly.

Duke discloses the use of a socket wrench with his adapter that also acts as an extension to drive many different tools. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the socket driver and socket drive extension to the Battrick, Machovsky, Bollinger and Duke tool to create a drain spud wrench assembly that could be used on several different sized deep sockets in hard to reach areas and allow the tool to be driven by different sized standard socket drives in areas where the removable handle may not be an option due to space constraints.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick, Machovsky, Bollinger and Duke as applied to claim 10 above, and further in view of Machovsky. As applied to claim 10, Machovsky, Bollinger, Battrick and Duke suggest the drain wrench discloses in part A of claim 18 and further Machovsky discloses the method of removing a drain spud from a tub or basin that is applied to claim 17 above. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the process of Machovsky to remove any of several different sized drain spuds with the Battrick, Machovsky, Bollinger and Duke tool.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Higgins ('816) discloses a plumbing tool for drain fixtures

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that has a recess capable of accepting a socket drive. Kuhn ('768) discloses a tap wrench that provides a removable cross-bar handle capable of driving the tool as well as a polygonal recess capable of accepting a standard socket drive, also to drive the tool.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R Muller whose telephone number is (703)305-0487. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J Hail III can be reached on (703)308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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